

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4090 of 2006

Mr. Narayan Y. Gaikwad & Anr..Petitioners

Versus

State of Maharashtra & Ors. ..Respondents

Mr. Anil Anturkar with Mr. S.S. Redekar, for the petitioners
Mr.N.V. Walawalkar, Senior Advocate, with Mr. A.B.Borkar
for the Respondent No.4.

Mr. S.S.Patwardhan, for respondent No.2.

Mrs. M.P. Thakur, AGP for respondent Nos. 1 & 3.

**CORAM : F.I. REBELLO &
R.V. MORE, JJ.**

DATED : 23RD JANUARY, 2007

P.C.

. The petitioners by the present petition have sought to challenge the development of land by respondent No.5 which is of the ownership of respondent No.4. The petitioners had contended that the land which is being developed was acquired from the forefathers of the petitioners by the erstwhile State of Kolhapur. The property is identified as bearing Survey No.679 admeasuring 2 Acres and 17 Gunthas. By GRDD No.132 that survey number along with four other survey number was sanctioned to be transferred to Pendharkars for the Kolhapur Cinetone on payment of Rs.10,433/-. That amount has been paid.

. Apart from that by a sale deed of 8th January, 1947 Pendharkars also purchased from the erstwhile Government of Kolhapur under GRDD No.728 of 26th May, 1946 another plot of

land for a sum of Rs.2,10,000/- . These plots of land came to be amalgamated into Survey No.2814-C. It appears that Pendharkars had taken a loan from New Citizen Bank of India and for that they had mortgaged these properties which in auction held was purchased by the respondent No.4. The total area purchased by respondent No.4 admeasures 45,769 sq. ft.

2. It is the contention of the petitioners in this petition firstly that once the area belonging to his predecessor was acquired for a public purpose of Cinetone it cannot be used for any other purpose. In our opinion considering the law declared by the Supreme Court in **Gulam Mustafa & Ors. vs. The State of Maharashtra & Ors., AIR 1977 S.C.448** and in **Mangal Oram and Ors. vs. State of Orissa and Anr. AIR 1977 SC 1456** once the land is acquired and possession taken it vests in the Government free from all encumbrances. It is open to the Government to make use of the land for any other public purpose. The person from whom the land is acquired has no right to challenge the said user for a purpose other than for which the land was acquired.

. The second contention as advanced was that there is no document evidencing the transfer of the land which are subject matter of GRDD No.132. The fact remains that the properties were surveyed in the name of Pendharkars and now presently in favour of respondent No.3. The moneys have been paid. It is contended further that as there was no document in respect of property covered by GRDD No.132 by order of this Court, the State Government was called upon to

produce the documents. Really speaking in our view considering the nature of the controversy it would not be possible for a writ Court to go into that aspect. The transactions took place in the year 1946 by the erstwhile State of Kolhapur i.e. prior to independence. The fact remains that the possession of the property was taken by Pendharkars. They have mortgaged the property. That property was sold in auction and purchased by respondent No.4.

3. The third contention advanced was that both in the sale deed as well as the acquisition the property was meant for public purpose and there is a clause therein which requires that the property cannot be converted for any other purpose without the express sanction of the Government. On behalf of the respondent No.4 learned Counsel has produced a letter dated 25th October, 1982 addressed to the respondent NO.4 under the signature of the Under Secretary to Government, Revenue and Forest Department wherein sanction for relaxing the condition for use of the land was granted. Once that be the case in our opinion it will not be open for this Court in the exercise of Writ Jurisdiction to entertain the present petition at the instance of the petitioner. In the light of that we find no merit in this petition, which is accordingly dismissed. There shall be no order as to costs.

(F.I. REBELLO, J)

(R.V. MORE, J)